

Annual List of Rule-Making Activity
Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 11**, Scallops: **11.22**, Targeted Closures – (2) Mossabec Reach; (7) Inner Harbor / Deep Hole / Southeast Harbor; (8) Muscle Ridge; (10) Damariscotta River; (13) Medomak / Waldoboro River; (14) Somes Harbor
Filing number: **2014-008**
Effective date: 1/18/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in Moosabec Reach, Inner Harbor/Deep Hole/Southeast Harbor, Muscle Ridge, Damariscotta River, Medomak (Waldoboro) River, and Somes Harbor in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2013-14 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by [12 M.R.S. §6171\(3\)](#).

Basis statement:

The Maine scallop fishery was formerly a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing just over 33,000 pounds of scallop meats from Maine waters. The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity. Beginning in 2009, the DMR has adopted a spatial management approach that has included area Targeted Closures, Limited Access Areas (LAA), and implemented a Rotational Management Plan in 2012. The combination of conservation measures appears to be effective as demonstrated by 289,827 lbs. being landed in 2012, an eight fold increase from 2005. In an effort to continue towards the goal of rebuilding without restricting the re-activation of approximately 150 latent licenses, six areas that have experienced a high amount of fishing effort last season as well as this season require conservation closures based on DMR staff observations and industry reports.

In the Moosabec Reach portion of The Reach LAA (Jonesport/Machias Area), the area west of the Jonesport-Beals bridge was inadvertently subject to fishing this season as the area was seeded several years ago by local harvesters and agreed upon to be a broodstock conservation area. While the area is within The Reach LAA, it has been the subject of intense fishing by 15 vessels the past two LAA days. The majority of the broodstock scallops have been harvested as indicated by a proportion of those vessels not being able to reach their daily limit on the second day as reported by industry. Therefore, an immediate conservation closure of the western side of the Jonesport-Beals bridge area out to a line drawn between Mack's Point, Beals to the end of the dock on Lobster Lane, Jonesport is needed to protect any remaining broodstock scallops in order to rebuild the scallop resource in this area for future years.

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In the Southeast Harbor LAA, Marine Patrol feedback in combination with direct industry reports indicate that this area has been overfished and requires an immediate conservation closure due to unusual damage and imminent depletion. Last season, this area was subjected to intense fishing effort and was closed early by an emergency action on December 22, 2012. This season, of the 13 vessels fishing in the area on the first LAA day, none reached their daily limit. On the second day, of the four boats fishing the area, none reached their daily limit. In addition, the spring 2013 DMR Survey indicated a high presence of sublegal scallops in the area which require protection in order to ensure that these scallops have the ability to recruit up to the fishery in subsequent fishing years. Therefore, an immediate conservation closure of the Southeast Harbor LAA is needed to ensure that sublegal scallops are provided the ability to recruit up to the fishery in subsequent fishing years and any remaining broodstock scallops are protected in order to rebuild the resource in this area.

In the Muscle Ridge area, port sampling observations and Marine Patrol feedback along with direct industry reports indicate that this area has been subject to intense fishing by 15-20 vessels each open day since January 2, 2014. In an effort to keep this area open further into the fishing season in lieu of a complete closure, a conservation closure of the area on the Fridays of each fishing week is needed to ensure this area is not completely depleted of broodstock scallops in the immediate future.

In the Damariscotta River portion of the Damariscotta/Sheepscot LAA, port sampling observations and Marine Patrol feedback along with direct industry reports indicate that this area has been overfished and requires an immediate conservation closure. Last season, this area was subjected to heavy fishing effort and was closed early by an emergency action on January 18, 2013. This season, of the five vessels fishing the area, a portion of them reported either taking the entire day to reach the daily limit or not being able to reach the limit. Given this, these vessels had to move out of the area between East Boothbay and the Bristol Gut to the mouth of the river after the second day it was open to fishing this season as a LAA. Therefore, an immediate conservation closure of the Damariscotta River down to the Bristol Gut is needed in order to protect from further damage and imminent depletion, while the remaining portion of the Damariscotta/Sheepscot LAA will remain open for harvest opportunities.

In the Medomak (Waldoboro) River portion of the Muscongus/West Penobscot Bay LAA, Marine Patrol feedback in combination with direct industry reports indicate that this area has been overfished and requires an immediate conservation closure. Last season, this area was subjected to heavy fishing effort and was closed early by an emergency action on December 22, 2012. This season, of the 15 vessels fishing in the area, only two reached the daily limit after fishing almost the entire day on both of the LAA days. In addition, a report by a harvester showed a high presence of sublegal scallops in the area, which requires protection in order to ensure these scallops have the ability to recruit up to the fishery in subsequent fishing years. Therefore, an immediate conservation closure of the Medomak (Waldoboro) River down to the mouth of the River is needed to protect any remaining broodstock scallops in order to rebuild the resource in this area. The remaining portion of the Muscongus/West Penobscot Bay LAA will remain open for harvest opportunities.

In the Somes Harbor area of the Mount Desert Island LAA, Marine Patrol feedback in combination with direct industry reports indicate that this area has been depleted of legal scallops and requires an immediate conservation closure due to unusual damage and imminent depletion. On the first LAA dive day, a diver reported direct observations on the bottom of a high concentration of sublegal scallops with very few legal scallops present. This was confirmed by another diver who was in the area prior to the season. In addition, on the second LAA drag day a dragger fishing the area confirmed absence of any sizeable amount of legal product. Therefore, an immediate conservation closure of the Southeast Harbor LAA is

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needed to ensure that the high concentration of sublegal scallops located there is provided the ability to recruit up to the fishery in subsequent fishing years.

The Department is concerned that continued harvesting during the remainder of the 2013-2014 fishing season in the above listed areas will damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Moosabec Reach, Inner Harbor/Deep Hole/Southeast Harbor, Muscle Ridge, Damariscotta River, Medomak (Waldoboro) River, and Somes Harbor.

For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by [12 M.R.S. §6171](#)(3).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 11**, Scallops: Targeted Closures – (8) Muscle Ridge;
(15) Cobscook Bay; (16) St. Croix River
Filing number: **2014-009**
Effective date: 1/24/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

Zone 3 (Cobscook Area) experienced a high amount of fishing effort last season, as well as this season, and requires conservation closures based on DMR port sampling, sea sampling and Marine Patrol observations and industry reports. The Maine scallop fishery was formerly a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing just over 33,000 pounds of scallop meats from Maine waters. The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan. The combination of conservation measures appears to be effective as demonstrated by 289,827 pounds being landed in 2012, an eight fold increase from 2005, however those landings were caught by approximately 150 additional participants compared to previous years.

Since 2002, the Department has been conducting a dredge-based fishery-independent survey of the state scallop resource. The 2006, 2007, 2012 and 2013 coast-wide surveys indicated Zone 3 (Cobscook Bay) had, by far, the highest scallop density in the state with the 2012 survey recording the highest amount of harvestable biomass yet observed for this area. Zone 3 is the only area exhibiting relatively high scallop production in recent years. The 2013 survey, however, indicated that 70% of all scallops in Zone 3 are sublegal size (4 inches or 101 mm); for the 2014-2015 season, 40% of all scallops will be of legal size (3.6-3.9 inch or 86-100 mm). Continued scallop fishing in Zone 3 at the levels allowed by the current rule would cause unusual damage and imminent depletion to the scallop resource due to mortality of scallops contacted by dragging during fishing operations. Incidental mortality of scallops caused by dragging has been estimated to be at least 13-17% per tow. This level of scallop mortality would have a significant negative impact on the abundance of the sublegal scallops that will recruit into the fishery in future seasons.

Further, Maine Marine Patrol, sea sampling and port sampling observations in combination with direct industry reports, indicate a total of 135 vessels have been consistently targeting scallops in Zone 3 since the fishery opened in December to both diving and dragging. The 2013 survey indicated that 380,100 pounds of harvestable biomass was available this season and after 24 days of fishing it is estimated that 278,100 pounds (or 73% of the harvestable biomass) have already been removed from this area by dive and drag licenses. DMRs observations largely account for the drag portion of the harvest in the area. Regardless of the contribution of the dive fleet (less than 10% statewide), the cumulative catch warrants emergency action in Zone 3.

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The current level of harvest equates to an exploitation rate (E) estimated at 0.7 with an approximate fishing mortality rate (F) of 1.2. By comparison, an F of 0.38 is considered the maximum sustainable rate in the US federal scallop fishery. In contrast, for the 2012-13 season the starting biomass estimated was 385,000 pounds and estimated landings totaled 191,160 pounds or approximately 50% of the available harvestable biomass. This level of removal, in combination with favorable environmental conditions during 2012-2013, contributed to high recruitment and meat size resulting in the resource being able to replace almost all that was removed last season. The circumstances are significantly different this season. Fleet behavior suggests that Zone 3 is being serially depleted. During the first week of the fishery, vessels were concentrated on the best scallop beds/grounds. Since then, the fleet spread out as they search for other beds and sequentially depleted those beds. While the fleet has been able to reach their daily landings limit, sea and port sampling observations indicate up to a 65% decline in Catch Per Unit Effort (CPUE) since the start of the season. Continued harvesting in Zone 3 at current levels during the remainder of the 2013-14 scallop fishing season is likely to damage and reduce the remaining legal-sized broodstock that is essential for successful spawning.

For these reasons, an immediate conservation closure of Cobscook Bay (East, South, and Johnson's Bay as well Friar Roads) on Mondays and Wednesdays to draggers and Wednesdays and Fridays to divers, as well as a conservation closure of the St. Croix River (north of Kendall's Point, Eastport) Mondays and Tuesday to draggers and Wednesdays and Thursdays to divers is necessary to protect the scallop resource from unusual damage and imminent depletion. Accordingly, the Commissioner hereby adopts this emergency rule implementing conservation closures of Cobscook Bay and the St. Croix River.

In addition, a clarification to the Muscle Ridge Targeted Closure is also provided. Access to this area was mistakenly reduced from five days a week to three days a week in a previous emergency rule-making action dated January 18, 2014 which was intended to reduce access to four days a week. Therefore, this clarification will increase access to Muscle Ridge from three to four days a week as originally intended as part of the January 18, 2014 rule-making action.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRS §§ 6102, 6171, 6431, 6851
Chapter number/title: **Ch. 25**, Lobster and Crab: **25.75**, Lobster Import/Export Requirements
Filing number: **2014-010**
Effective date: 1/29/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

The Department of Marine Resources changes this regulation in Ch. 25.75, Lobster Import/Export Permit. The updated procedures for the lobster import/export permit were developed in consultation with import/export permit holders. These changes are intended to improve the efficiency of tracking procedures of oversized lobsters that are legally transported through the state of Maine. The changes will result in improved enforcement along with easier compliance and reduced labor and materials costs for the industry.

Fiscal impact of rule:

The impact of this regulation would not require measurable additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6448
Chapter number/title: **Ch. 25**, Lobster and Crab: **25.93(F)**, Lobster Zones A and B Exit Ratios for Limited-entry Zones
Filing number: **2014-011**
Effective date: 1/29/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Marine Resources changes this regulation in Ch. 25.93(F) after actions of Lobster Management Zone Councils (Council) regarding lobster license exit-to-entry ratios in accordance with 12 M.R.S. §6448. A Council may recommend to the Commissioner whether the exit-to-entry ratios for a Lobster Management Zone (Zone) should be applied to either the number of licenses that are not renewed **or** to the number of trap tags associated with the licenses not renewed. If a Council proposes to change **only** the currency (tags or licenses retired), then the Council is not required to request a survey be conducted.

In 2011, the Legislature directed the Department of Marine Resources to contract for an independent evaluation of the existing limited entry licensing system in Maine's lobster and crab fishery. This was in response to concerns raised about the long waiting lists for licenses that have developed in most Zones, and the low number of licenses that are issued off of the waiting lists each year.

A study was completed by the Gulf of Maine Research Institute (GMRI), and some of the concepts proposed in their report were discussed in the Commissioner's outreach meetings that were held in numerous coastal communities in January 2013. Following those meetings, the Legislature directed the Department to hold meetings with the Zone Councils to determine if there was any interest in addressing the issues identified with the current system, using existing tools available to the Zones.

In addition, Maine state law now allows a Lobster Management Policy Council the option to recommend to the Commissioner whether the exit ratio adopted for a lobster management zone should be applied to the number of **licenses** that are not renewed or to the number of **trap tags** associated with the licenses that are not renewed.

The Lobster Management Policy Council is not required to submit the recommendation to referendum if the exit ratio remains the same and the zone council votes to change the currency to **licenses** that are not renewed. If the Zone Council proposes to change the exit ratio, regardless of the currency (tags or licenses retired), the council is required to request a survey be conducted.

Basis statement:

The Department of Marine Resources changes this regulation in Ch. 25.93(F) after actions of Lobster Management Zone Councils (Council) regarding lobster license exit-to-entry ratios in accordance with 12 M.R.S. §6448. A Council may recommend to the Commissioner whether the exit-to-entry ratios for a Lobster Management Zone (Zone) should be applied to either the number of licenses that are not renewed **or** to the number of trap tags associated with the licenses not renewed. If a Council proposes to change **only** the currency (tags or licenses retired), then the Council is not required to request a survey be conducted.

In 2011, the Legislature directed the Department of Marine Resources to contract for an independent evaluation of the existing limited entry licensing system in Maine's lobster and crab fishery. This was in response to concerns raised about the long waiting lists for licenses

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that have developed in most Zones, and the low number of licenses that are issued off of the waiting lists each year.

A study was completed by the Gulf of Maine Research Institute (GMRI), and some of the concepts proposed in their report were discussed in the Commissioner's outreach meetings that were held in numerous coastal communities in January 2013. Following those meetings, the Legislature directed the Department to hold meetings with the Zone Councils to determine if there was any interest in addressing the issues identified with the current system, using existing tools available to the Zones.

In addition, Maine State law now allows a Lobster Management Policy Council the option to recommend to the Commissioner whether the exit ratio adopted for a lobster management zone should be applied to the number of **licenses** that are not renewed or to the number of **trap tags** associated with the licenses that are not renewed. The Lobster Management Policy Council is not required to submit the recommendation to referendum if the exit ratio remains the same and the zone council votes to change the currency to **licenses** that are not renewed. If the zone proposes to change the exit ratio, regardless of the currency (tags or licenses retired), the Zone Council is required to request a survey be conducted.

In Zone A, this rule-making changes the 3:1 exit-to-entry ratio currency from the number of **trap tags** associated with licenses not renewed to the number of **licenses** not renewed. Therefore, only a Zone A Council vote and subsequent DMR rule-making is required to move forward. At the Zone A Council meeting on September 24, 2013, an affirmative vote by the Council recommended this currency change from tags to licenses. With this change, more opportunity will become available for lobster license waiting list individuals in this Zone. This action was in response to concerns raised about the long waiting lists that have developed in most Zones, and the low number of licenses that have been issued off of the waiting list each year. Under the current system in Zone A, only three new lobster licenses were issued in each of the last two years.

In Zone B, this rule-making changes the 5:1 exit-to-entry ratio currency from the number of **trap tags** associated with licenses not renewed to the number of **licenses** not renewed similar to the action taken in Zone A. At the Zone B Council meeting on September 25, 2013, an affirmative vote by the Council recommended this currency change from tags to licenses. Therefore, only a Zone B Council vote and subsequent DMR rule-making is required to move forward. The Zone B waiting list currently has 63 names on it. Under the current system, in Zone B only one new lobster license was issued in each of the last two years.

Fiscal impact of rule:

The impact of this regulation would not require measurable additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 11**, Scallops: **11.09**, Harvesting Season; **11.22**, Targeted Closures – (8) Muscle Ridge; (10) Damariscotta River; (13) Muscongus Area; (14) Somes Sound; (15) Cobscook Bay; (16) St. Croix River; (17) Whiting Bay and Dennys Bay Area; (18) Gouldsboro Bay; (19) Jonesport Reach
Filing number: **2014-018**
Effective date: 2/8/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

The Maine scallop fishery was formerly a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing just over 33,000 pounds of scallop meats from Maine waters. The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan. The combination of conservation measures appears to be effective as demonstrated by 289,827 pounds being landed in 2012, an eight fold increase from 2005. However, those landings were caught by approximately 150 additional participants compared to previous years.

Earlier this season, the DMR enacted emergency rule-making action on two occasions to protect against unusual damage and imminent depletion. On January 18, 2014, conservation closures were enacted in Moosabec Reach, Inner Harbor/Deep Hole/Southeast Harbor, Muscle Ridge, Damariscotta River, Medomak (Waldoboro) River, and Somes Harbor. On January 24, 2014, emergency rule-making enacted a conservation closure of Cobscook Bay (East, South, and Johnson's Bay as well Friar Roads) on Mondays and Wednesdays to draggers and Wednesdays and Fridays to divers, as well as a conservation closure of the St. Croix River (north of Kendall's Point, Eastport) Mondays and Tuesday to draggers and Wednesdays and Thursdays to divers.

The Department is concerned that continued harvesting during the remainder of the 2013-2014 fishing season in the areas listed below will damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. A complete closure in Zone 3 for both draggers and divers is necessary. An immediate conservation closure is necessary in the Muscle Ridge, Damariscotta River, Muscongus Area, Somes Sound, Cobscook Bay, St. Croix River, Whiting Bay & Dennys Bay Area, Gouldsboro Bay, and Jonesport Reach.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 11**, Scallops: **11.22**, Targeted Closures- (20) Machias Area, and (21) Lower Sheepscot River
Filing number: **2014-020**
Effective date: 2/22/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

The Maine scallop fishery is a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing just over 33,000 pounds of scallop meats from Maine waters. The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan. The combination of conservation measures appears to be effective as demonstrated by 289,827 pounds being landed in 2012, an eight fold increase from 2005. However, those landings were caught by approximately 150 additional participants compared to previous years.

Based on recent information and feedback, the Department is concerned that continued harvesting during the remainder of the 2013-2014 fishing season in the Machias Area LAA and the Lower Sheepscot River will damage sub-legal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary in the Machias Area and the Lower Sheepscot River area.

In the Machias Area LAA, sea sampling observations and Marine Patrol feedback along with direct industry reports indicate that this area has been depleted of the majority of legal-sized scallops and requires an immediate conservation closure. Last season, this area was subjected to heavy fishing effort and was closed early by an emergency action on February 4, 2013. So far this season, the area has been fished by upwards of 85 vessels. The majority of the vessels fishing the area were able to reach their daily landings limit within a few hours. However, over the past two LAA days only a small portion of the vessels were able to reach the 15 gallon daily limit with many only landing five gallons. This indicates the majority of the legal-sized scallops in this area have been harvested. In addition, the 2013 spring DMR survey indicated that 49% of all scallops in the Machias Bay LAA are sub-legal size (less than 4 inches or 101 mm). Continued scallop fishing in the Machias Area LAA would cause continued unusual damage and imminent depletion to the scallop resource due to mortality of scallops contacted by dragging during fishing operations. Incidental mortality of scallops caused by dragging has been estimated to be at least 13-17% per tow. Regardless of the lesser contribution of the dive fleet (less than 10% statewide), the cumulative catch warrants emergency action. This level of scallop mortality would have a significant negative impact on the abundance of the sublegal scallops that will recruit into the fishery in future seasons. DMRs observations largely account for the drag portion of the harvest in the area. Therefore, an immediate conservation closure of the Machias Area LAA is needed to protect any

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remaining broodstock scallops in order to rebuild the resource in this area as well as sublegal scallops that would recruit up to the fishery in subsequent fishing seasons.

In the Lower Sheepscot River, the area has been heavily fished since the beginning of the season and a larger proportion of sub-legal scallops have been observed by industry and Marine Patrol in this area. These scallops require protection in order to recruit up to the fishery in future seasons. Therefore, an immediate conservation closure of the Lower Sheepscot River is needed in order to protect both remaining legal scallops required for rebuilding and sublegal scallops that will recruit up to the fishery in subsequent years from further damage and imminent depletion.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171-A(4-A), 6192
Chapter number/title: **Ch. 25**, Lobster and Crab: **25.65**, Lobster and Crab Closure in Penobscot River
Filing number: **2014-021**
Effective date: 2/22/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River above a line starting at the most northwestern point of Wilson Point (near the end of Wilson Point Road) in the Town of Castine continuing in a northwesterly direction to the Fort Point Lighthouse on Cape Jellison in the Town of Stockton Springs. Recent data provided to the Department indicates that lobsters in this area may have mercury levels above the Maine CDC action level and would warrant a consumption advisory for the most sensitive populations. The Department believes immediate action is warranted as a precautionary measure, and is accordingly closing this area to the harvest of lobsters and crabs while the Department implements a monitoring program inside and beyond the closure to confirm and expand this dataset in order to inform future public health actions. For these reasons, the Commissioner hereby adopts an emergency closure to the taking of lobster and crab in these areas as authorized by 12 M.R.S. §6171-A(4-A) and 12 M.R.S. §6192. As authorized by 12 M.R.S. §6171-A(4-A) and 12 M.R.S. §6192 the Commissioner of Marine Resources adopts this emergency regulation because “immediate action is necessary to protect the public health or public safety or to prevent property damage or serious economic harm to the area in which marine resources are harvested.”

Basis statement:

The Commissioner adopts this emergency rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River above a line starting at the most northwestern point of Wilson Point (near the end of Wilson Point Road) in the Town of Castine continuing in a northwesterly direction to the Fort Point Lighthouse on Cape Jellison in the Town of Stockton Springs.

The justification for the chosen boundary of the closed area is based on recent data provided to the Department that indicates that lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

For monitoring contaminants in Maine lobster, the State relies on data from the U.S. Environmental Protection Agency’s National Coastal Condition Assessment (NCCA) Program, which last assessed contaminants in lobster in 2010. Data from the 2010 NCCA revealed that mercury levels in Maine lobster were below the Maine CDC action level that would warrant a consumption advisory for sensitive populations. However, the Department recently received additional data which were collected as a result of court-ordered study stemming from a federal

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lawsuit (*Maine People's Alliance and the Natural Resources Defense Council v. Mallinckrodt, Inc.*). The Department requested analysis of the data by State Toxicologist Dr. Andrew Smith and Department of Environmental Protection staff. Based on this analysis, DMR determined that a consumption advisory would be warranted for lobster taken from the designated area. Because this is a very discrete area and in order to be health protective, DMR is instead taking immediate action to close the area as a precautionary measure. DMR anticipates that the closure will be in place a minimum of two years while the State continues to collect more information from the area to inform future management and public health actions.

While there was significantly less data available for crabs in the study, the DMR believes that there is adequate reason to be concerned that crabs could have similar contamination levels to lobster in the closure area. Because DMR has limited data from this area, a precautionary approach is being taken by also closing the area to crab harvest until additional samples can be taken and analyzed.

This emergency rule-making is necessary to protect the public health. As authorized by 12 M.R.S. §6171-A(4-A) and 12 M.R.S. §6192, the Commissioner of Marine Resources adopts this emergency regulation. Separate regular rule-making will be forthcoming to implement this closure for a minimum of two years.

In accordance with [5 M.R.S. §8052, sub-§5-A](#), a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 40**, Smelt Regulations
Filing number: **2014-039**
Effective date: 3/14/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Rainbow smelt populations have been contracting in range over the last century. Historically, populations were found from Chesapeake Bay to Labrador, but the current southern extent of the range is likely Buzzards Bay, Massachusetts. This range contraction has occurred rapidly, in less than 100 years.

Following the designation of rainbow smelt as a species of concern, the Maine Department of Marine Resources received a 6-year grant from NOAA's Office of Protected Resources to work in collaboration with the Massachusetts Division of Marine Fisheries and New Hampshire Fish and Game Department to document the status of and develop conservation strategies for rainbow smelt (NA06NMF4720249). Department surveys have shown that Maine smelt populations have become reduced in many portions of the state. Comparing the number and strength of spawning runs currently to that of the late 1970's, we have found that many runs have declined, while others are extirpated. Data collected during spawning and creel surveys have also shown that length at age has declined compared to historical records in upper Casco Bay and Kennebec River populations. Because of these documented population declines and evidence of biologically stressed populations, it is imperative to pursue management measures that will sustain and restore this species.

An exception to this emergency rule was made for existing smelt ice fishing camp operations on the Kennebec River and its tributaries in order to allow these operations to finish their 2013-14 season during the coming days.

As authorized by 12 M.R.S. §6171(3), the Commissioner of Marine Resources adopts this emergency regulation due to the risk of unusual damage or imminent depletion of the smelt fishery.

Basis statement:

Rainbow smelt populations have been contracting in range over the last century. Historically, populations were found from Chesapeake Bay to Labrador, but the current southern extent of the range is likely Buzzards Bay, Massachusetts. This range contraction has occurred rapidly, in less than 100 years.

Following the designation of rainbow smelt by NOAA as a species of concern, the Maine Department of Marine Resources received a 6-year grant from NOAA's Office of Protected Resources to work in collaboration with the Massachusetts Division of Marine Fisheries and New Hampshire Fish and Game Department to document the regional status of and develop conservation strategies for rainbow smelt (NA06NMF4720249). Our surveys have shown that smelt populations have declined in many portions of Maine. Comparing the number and strength of Maine spawning runs currently to that of the late 1970's, we have found that many runs have declined, while others are extirpated. Data collected during spawning and creel surveys have also shown that length at age has declined compared to historical records in upper Casco Bay and Kennebec River populations. Because of these documented population declines and evidence of biologically stressed populations, it is necessary to pursue management measures that will sustain and restore this species.

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Department surveys have found evidence of population decline in many portions of the state. In 2005-2009, DMR and Marine Patrol documented all current spawning sites in Maine. Comparing the current strength of runs to data collected by DMR in the early 1970's and in 1984 from DMR and USFWS, we found that in the area from Kittery to Penobscot Bay, 11% of runs are currently declining, while in the downeast region, only 2% of runs are declining. Of the sites that historically supported smelt runs, only 38% of the sites west of Penobscot Bay were documented to currently support spawning runs, while 61% of sites downeast still support runs.

Other surveys in Maine have also documented declines in smelt abundance. Annual juvenile abundance surveys in the Kennebec River and Merrymeeting Bay have found that the Catch-per-Unit-Effort (CPUE) of rainbow smelt has been below the series average since 2005, and has been above the 25% quartile only 1 time since 2008 (in 2011). The 2012 juvenile year class is now returning in 2014 as adults and is producing the least productive winter fishing season recorded. Also on the Kennebec River and Merrymeeting Bay, winter creel surveys targeting recreational smelt fishing have found that the number of smelt caught by recreational fishers during 2009-2014 is on average lower than during 1979-1982. As of Feb. 7 2014, the average catch has been 1 smelt for over 3 hours of fishing, and over half of the anglers surveyed (39 out of 66) caught no smelt during their entire fishing effort. Further, surveys conducted 1979-1982 show a fairly even CPUE during each survey year. In contrast, surveys conducted 2009-2014 show the CPUE significantly lower every other year, although there was no change in survey effort. From our data, we find that the years where catches have been very low have few younger (age-2) fish, and are composed mostly of older fish. In years where catches have been better, age-2 fish dominate the catch. This is reflective of an unstable population dependent on one year-class of spawners in any given year.

Spring fyke net surveys targeting spawning smelt have found that runs west of Penobscot Bay have highly variable CPUEs from year to year, indicating unstable populations, while runs surveyed downeast have consistent CPUEs. Other biological parameters, like age distributions and sex ratios, show that runs downeast are more stable because they are composed of larger age distributions and low sex ratios, while runs in Penobscot Bay and west have truncated age distributions (few older smelt), and females are more limited.

An exception to this emergency rule was made for existing smelt camp operations on the Kennebec River and its tributaries in order to allow these operations to finish their 2013-14 season during the coming days.

As authorized by 12 M.R.S §6171(3), the Commissioner of Marine Resources adopts this emergency regulation due to the risk of unusual damage or imminent depletion of the smelt fishery.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 32**, Eels; 32.03(1)(B), 2014 Elver Season Closure; *and* **Ch. 55**, Gear Restrictions: 55.07, Seasonal Net Restrictions
Filing number: **2014-044, 045**
Effective date: 3/21/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making in order to protect the American eel population from the unusual damage that would ensue from allowing a fishery on elvers without management measures restricting catch so that an overall Total Allowable Catch is enforceable. Delay of the opening of the 2014 elver harvesting season is necessary in order to establish, implement and administer the elver transaction card system as authorized by recent enactment of P.L. 2014, Ch. 468, Section 24 (emergency, effective March 14, 2014) and the establishment of an overall state quota and an individual quota system, as authorized by LD 1625. These measures are necessary in order to ensure that landings can be reduced to 11,749 lbs. as required by the Atlantic States Marine Fisheries Commission (ASMFC). Without these management measures being implemented, there is no level of elver fishing that can be permitted without causing unusual damage to the American eel population. The extremely high prices paid for elvers have incentivized tremendous fishing effort on this resource that must be controlled with additional management measures. Exceptions to this emergency rule were made to areas that are still open to smelt fishing from Stonington to the Canadian border as well as for those municipalities or individuals with existing river herring harvest rights in accordance with 12 M.R.S. §6131 and Ch. 30.02. For these reasons, the Commissioner hereby adopts an emergency closure to the taking of elvers as authorized by 12 M.R.S. §6171(3) due to the risk of unusual damage of the elver fishery if the season was opened as scheduled on Saturday March 22nd.

Basis statement:

The Commissioner adopts this emergency rule-making in order to protect the American eel population from the risk of unusual damage by delaying the opening of the 2014 elver harvesting season. The delay is necessary to establish, implement and administer the elver transaction card system as authorized in P.L. 2014, Ch. 468, Section 24 (emergency, effective March 13, 2014). In addition, the delayed season start will allow for establishment of an overall state quota and an individual quota system, as authorized by LD 1625.

According to the 2012 benchmark stock assessment, the American eel population is depleted in U.S. waters. The stock is at or near historically low levels, due to a combination of historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, toxins and contaminants, and disease. In August 2013, in response to the findings of the 2012 stock assessment, the Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum III to the Interstate FMP, with the goal of reducing mortality and increasing conservation of American eel stocks across all life stages. The Addendum establishes new management measures for both the commercial (glass, yellow, and silver) and recreational eel fisheries, as well as implements fishery independent and fishery dependent monitoring requirements. As approved, Addendum III reduces overall mortality of American eel.

For the elver fishery in Maine, the required management measures on the glass eel (elver) fishery mandate that the state reduce its landings for the 2014 season by 35% from the

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dealer reported landings in 2013. This would allow a maximum of 11,749 lbs. of elvers to be landed. This reduction is proposed to be implemented through the establishment of an overall state quota, an individual quota system, and the requirement to use transaction (“swipe”) cards, all of which are authorized in either pending or enacted legislation and is necessary to meet the requirements of the ASMFC and to protect elvers from unusual damage caused by overfishing.

Maine legislation (LD 1625 and P.L. 2014, Ch. 468 (emergency, effective March 14, 2014)) authorizes the Commissioner to establish an individual quota system, establishes the requirement for license holders to use transaction (“swipe”) cards when selling elvers, and creates the penalties for selling elvers in excess of an individual’s quota, including license suspension and a penalty for pecuniary gain. Without these additional measures, it is not possible absent a closure to restrict the landings in this fishery to a level where the fishery will not cause unusual damage to the resource. The extremely high price of elvers will incentivize tremendous effort in the fishery, beyond what the resource can sustain. Upon final enactment and the effective date of the legislation ensuring the implementation of these management measures designed to restrict the landings to no more than 11,749 lbs., the fishery will be opened for the remainder of the statutorily authorized season as soon as the above listed measures can be implemented.

Exceptions to this emergency rule were made to areas that are still open to smelt fishing from Stonington to the Canadian border as well as for those municipalities or individuals with existing river herring harvest rights in accordance with 12 M.R.S. §6131 and Ch. 30.02. This emergency rule-making is necessary to protect the American eel from the risk of unusual damage that would result from unrestricted fishing if the season was opened as scheduled on Saturday March 22nd. As authorized by 12 M.R.S. §6171(3) the Commissioner of Marine Resources adopts this emergency regulation delaying the start of the elver harvest season.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6505-A sub-§3-A
Chapter number/title: **Ch. 32**, Eels: 32.03, Commercial Harvesting Regulations; 32.35, Elver Quota System for 2014 Elver Season; 32.50, Mandatory Elver Dealer Meeting to Prepare for the 2014 Elver Season; 32.55, Elvers Returned to Permanent Facility(1)(B), 2014 Elver Season Closure
Filing number: **2014-056**
Effective date: 3/26/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rule-making in order to establish, implement and administer an elver individual fishing quota system in advance of the 2014 elver season in order to ensure that the elver fishery annual landings do not exceed the overall annual quota established by the Atlantic States Marine Fisheries Commission (ASMFC). The rule-making repeals the closure implemented in a previous emergency rule-making and establishes that the season will begin on April 6, 2014 at noon. In accordance with 12 MRS §6575-B, sub-§8, it establishes the tributaries of the St. Croix River within which the use of fyke nets are prohibited. As authorized by 12 MRS §6505-A, sub-§3-A, the rule-making establishes the overall annual quota for 2014, the amount of quota allocated to individuals licensed under 12 M.R.S. §6505-A, the formula by which the quota is allocated to those individual license holders, and the amount of quota allocated to individuals licensed under 12 M.R.S. §6302-A. In order to implement and administer the elver individual fishing quota system, it establishes the process by which individuals may obtain transaction cards, and specifies that the Department will deactivate the transaction card when an individual has met or exceeded the individual fishing quota which they are allocated. The rule-making establishes a mandatory meeting for elver dealers licensed under 12 M.R.S. §6864, to ensure that elver dealers understand their responsibilities for proper administration of the individual fishing quota system. Finally, the rule-making clarifies the existing requirement for elver dealers to bring elvers back to their permanent facility.

Basis statement:

The Commissioner adopts this emergency rule-making in order to establish, implement and administer an elver individual fishing quota system in advance of the 2014 elver season in order to ensure that the elver fishery annual landings do not exceed the overall annual quota established by the Atlantic States Marine Fisheries Commission (ASMFC).

The rule-making repeals the closure implemented in a previous emergency rule-making and establishes that the season will begin on April 6 at noon. In accordance with 12 M.R.S. §6575-B, sub-§8, it establishes the tributaries of the St. Croix River within which the use of fyke nets are prohibited. As authorized by 12 M.R.S. §6505-A, sub-§3-A, the rule-making establishes the overall annual quota for 2014, the amount of quota allocated to individuals licensed under 12 M.R.S. §6505-A, the formula by which the quota is allocated to those individual license holders, and the amount of quota allocated to individuals licensed under 12 M.R.S. §6302-A. In order to implement and administer the elver individual fishing quota system, it establishes the process by which individuals may obtain transaction cards, and specifies that the Department will deactivate the transaction card when an individual has met or exceeded the individual fishing quota which they are allocated. The rule-making establishes a mandatory meeting for elver dealers licensed under 12 M.R.S. §6864, to ensure that elver

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dealers understand their responsibilities for proper administration of the individual fishing quota system. Finally, the rule-making clarifies the existing requirement for elver dealers to bring elvers back to their permanent facility.

According to the 2012 benchmark stock assessment, the American eel population is depleted in U.S. waters. The stock is at or near historically low levels, due to a combination of historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, toxins and contaminants, and disease. In August 2013, in response to the findings of the 2012 stock assessment, ASMFC approved Addendum III to the Interstate FMP, with the goal of reducing mortality and increasing conservation of American eel stocks across all life stages. The Addendum establishes new management measures for both the commercial (glass, yellow, and silver) and recreational eel fisheries, as well as implements fishery independent and fishery dependent monitoring requirements. As approved, Addendum III reduces overall mortality of American eel.

For the elver fishery in Maine, the required management measures on the glass eel (elver) fishery mandate that the state reduce its landings for the 2014 season by 35% from the dealer reported landings in 2013. This would allow a maximum of 11,749 lbs. of elvers to be landed. This reduction is implemented through the establishment of an overall state quota, an individual quota system, and the requirement to use transaction ("swipe") cards, all of which are authorized in statute and are necessary to meet the requirements of the ASMFC and to protect the American eel population.

Without these additional measures, it is not possible absent a closure to restrict the landings in this fishery to a level where the fishery will not cause unusual damage to the resource. With the passage of the legislation ensuring the implementation of these management measures designed to restrict the landings to no more than 11,749 lbs., the closure of the fishery is repealed and an opening date of noon on April 6th established, for the remainder of the statutorily authorized season.

This emergency rule-making is necessary to establish, implement and administer an elver individual fishing quota system in advance of the 2014 elver season in order to ensure that the elver fishery annual landings do not exceed the overall annual quota established by the ASMFC. As authorized by 12 MRS §6505-A, sub-§3-A the Commissioner of Marine Resources adopts this emergency regulation.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6505-A sub-§3-A
Chapter number/title: **Ch. 32**, Eels: **32.35**, Elver Quota System for 2014 Elver Season
Filing number: **2014-060** (*filed with 2014-061*)
Effective date: 3/29/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

The Commissioner adopts this emergency rule-making in order to correct an inadvertent inclusion in the March 26, 2014 adopted emergency rule as part of the enacted Ch. 32.35, Elver Quota System for 2014 Elver Season. This rule-making action would delete the following language:

"the maximum amount of elver individual quota that an individual licensed to fish for elvers under 12 M.R.S. §6505-A will be allocated is 1% of the total amount of elver fishing quota that will be allocated to individuals licensed to fish for elvers under 12 M.R.S. §6505-A, or 87.1 lbs."

This emergency rule-making would also delete sections of the existing Ch. 8, Landings Program elver reporting requirements that have been found to be in conflict with 12 M.R.S. §6864, amended by P.L. 2014, Ch. 468, Sections 37 and 38 (emergency, effective March 13, 2014). As authorized by 12 M.R.S. §6505-A, sub-§3-A the Commissioner of Marine Resources adopts this emergency regulation.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6505-A sub-§3-A
Chapter number/title: **Ch. 8**, Landings Program: **8.10(C)(3)**, Additional Data Elements and Requirements for Specific fisheries: Elvers
Filing number: **2014-061** (*filed with 2014-060*)
Effective date: 3/29/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

The Commissioner adopts this emergency rule-making in order to correct an inadvertent inclusion in the March 26, 2014 adopted emergency rule as part of the enacted Ch. 32.35, Elver Quota System for 2014 Elver Season. This rule-making action would delete the following language:

"the maximum amount of elver individual quota that an individual licensed to fish for elvers under 12 M.R.S. §6505-A will be allocated is 1% of the total amount of elver fishing quota that will be allocated to individuals licensed to fish for elvers under 12 M.R.S. §6505-A, or 87.1 lbs."

This emergency rule-making would also delete sections of the existing Ch. 8, Landings Program elver reporting requirements that have been found to be in conflict with 12 M.R.S. §6864, amended by P.L. 2014, Ch. 468, Sections 37 and 38 (emergency, effective March 13, 2014). As authorized by 12 M.R.S. §6505-A, sub-§3-A the Commissioner of Marine Resources adopts this emergency regulation.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 8**, Landings Program: **8.10(C)(3)**, Additional Data Elements and Requirements for Specific fisheries: Elvers
Ch. 32, Eels: **32.01**, Definitions; **32.45**, Elver Record Keeping; **32.60**, Transport of Elvers through the State of Maine
Filing number: **2014-088, 089**
Effective date: 5/6/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(same as Basis Statement)

Basis statement:

The Commissioner adopts this emergency rule-making in order to protect the American eel population, specifically elvers, from the risk of unusual damage and imminent depletion by implementing two additional measures pertaining to elver dealers. It has been determined by the Department of Marine Resources and the Maine Marine Patrol that these measures have become necessary in order to prevent overfishing and ensure continued compliance with Atlantic States Marine Fisheries Commission (ASMFC) mandated quota levels for the 2014 elver harvest season.

According to the 2012 benchmark stock assessment, the American eel population is depleted in U.S. waters. The stock is at or near historically low levels, due to a combination of historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, toxins and contaminants, and disease. In August 2013, in response to the findings of the 2012 stock assessment, the ASMFC approved Addendum III to the Interstate FMP, with the goal of reducing mortality and increasing conservation of American eel stocks across all life stages. The Addendum establishes new management measures for both the commercial (glass, yellow, and silver) and recreational eel fisheries, as well as implements fishery independent and fishery dependent monitoring requirements. As approved, Addendum III reduces overall mortality of American eel. The extremely high price of elvers incentivizes tremendous effort in the fishery, beyond what the resource can sustain.

For the elver fishery in Maine, the required ASMFC management measures on the glass eel (elver) fishery mandated that the State reduce its landings for the 2014 season by 35% from the dealer reported landings in 2013. This allows for a maximum of 11,749 lbs. of elvers to be landed during the 2014 harvesting season. This reduction is being implemented through the establishment of an overall state quota, an individual quota system, and the requirement to use transaction ("swipe") cards, all of which were authorized in legislation and were necessary to meet the requirements of the ASMFC in order to protect elvers from unusual damage caused by overfishing.

The first measure being imposed through this emergency rule-making entails a new, minimal administrative requirement for elver dealers. Before purchasing elvers each fishing day (as defined within the regulation), licensed elver dealers will now be required to synchronize DMR-provided reporting software in order to align with current Department records. In some isolated cases during the implementation of the elver swipe card transaction system this harvesting season, it has been found that elver dealers were not operating with the most current information regarding those license holders who had reached their quota. It was determined that it is necessary to explicitly require elver dealers to synchronize with the DMR

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system on at least a daily basis prior to purchasing elvers so that dealers do not purchase from harvesters who are not eligible to sell elvers. This will minimize the opportunity for illegal elver sales that would cause the State to exceed the Total Allowable Catch set by ASMFC.

The second measure being imposed through this emergency rule-making would clarify that no person may possess elvers that were harvested outside the State of Maine, except if they are exclusively transporting legally harvested elvers through the State under the authority of the laws of the United States. Maine is required to ensure strict compliance with the 11,749 pound quota mandated by ASMFC. This quota is closely tracked through the use of transaction cards, which establish the records regarding all of the elvers in possession of an elver dealer. Without this restriction, elver dealers could comingle elvers caught out of state with elvers harvested in Maine, making it impossible to ensure accurate tracking of the landings and compliance with the quota. Non-compliance with this quota could result in overfishing and have a significant detrimental impact on the elver resource resulting in further restriction or closure of this valuable fishery by ASMFC. The DMR is entrusted with protecting the integrity of Maine's marine natural resources and finds this measure a reasonable option that serves a legitimate local purpose with regard to the movement of commerce. DMR has determined that while the opportunity to transport elvers through the state can be maintained, any potential to bring elvers into a permanent facility, repack, or comingle them presents a significant enforcement challenge that cannot be overcome with existing resources and jeopardizes the State's ability to accurately track Maine harvester landings.

This emergency rule-making measure should have no effect on licensed, legal elver harvesting activities inside the state of Maine. No less restrictive alternative to this new prohibition or an amended recordkeeping provision can be envisioned at this time.

In summary, these emergency rule-making measures are necessary in order to maintain ASMFC compliance and to protect the American eel, namely elvers, from the risk of unusual damage and imminent depletion that could result from non-implementation. As authorized by 12 M.R.S. §6171(3), the Commissioner of the Department of Marine Resources adopts this emergency regulation implementing additional elver transaction requirements.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 34**, Groundfish Regulations
Filing number: **2014-093**
Effective date: 5/15/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2014, the Department enacts this emergency rule-making for all persons aboard charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. For recreational cod fishing, the minimum fish size increases from 19 inches to 21 inches and the closed season is increased by two months and is now September 1, 2014 through April 14, 2015. For recreational haddock fishing, the daily per angler bag limit decreases from an unlimited amount to three fish per day and the closed season increases by four months and is now September 1 through November 30, 2014 and March 1 through April 30, 2015.

The recreational catch of both Gulf of Maine cod and haddock exceeded the catch limit in place for FY 2013. Because the FY 2013 recreational overage was substantial, significant changes in management measures were deemed necessary by NMFS to ensure the recreational fishery does not exceed its catch limit again in FY 2014. A very small bag limit was deemed required to sufficiently reduce recreational haddock catch and prevent additional quota overages. Analysis shows that many anglers encounter and keep only small numbers of haddock. The available information for FY 2013 shows that, on average, less than one haddock was kept per angler.

As authorized by 12 M.R.S.A. §6171(3), the Commissioner of Marine Resources adopts this emergency regulation due to the risk of unusual damage and imminent depletion of the cod and haddock resources.

Fiscal impact of rule:

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §1671-A(4-A)
Chapter number/title: **Ch. 25**, Lobster and Crab. **25.65**, Lobster and Crab in Penobscot River
Filing number: **2014-094**
Effective date: 5/19/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regular rule-making would make permanent the emergency rule-making effective February 22, 2014 that was necessary in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River above a line starting at the most northwestern point of Wilson Point (near the end of Wilson Point Road) in the Town of Castine continuing in a northwesterly direction to the Fort Point Lighthouse on Cape Jellison in the Town of Stockton Springs.

The justification for the chosen boundary of the closed area was based on recent data provided to the Department that indicates that lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

For monitoring contaminants in Maine lobster, the State relies on data from the U.S. Environmental Protection Agency's National Coastal Condition Assessment (NCCA) Program, which last assessed contaminants in lobster in 2010. Data from the 2010 NCCA revealed that mercury levels in Maine lobster were below the Maine CDC action level that would warrant a consumption advisory for sensitive populations. However, the Department recently received additional data which were collected as a result of court-ordered study stemming from a federal lawsuit (*Maine People's Alliance and the Natural Resources Defense Council v. Mallinckrodt, Inc.*). The Department requested analysis of the data by the State Toxicologist and Department of Environmental Protection staff. Based on this analysis, DMR determined that a consumption advisory would be warranted for lobster taken from the designated area. Because this is a very discrete area and in order to be health protective, DMR is instead took immediate action to close the area as a precautionary measure. DMR anticipates that the closure will be in place a minimum of two years while the State continues to collect more information from the area to inform future management and public health actions.

Basis statement:

The Commissioner adopted emergency rule-making on February 22, 2014 in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River above a line starting at the most northwestern point of Wilson Point (near the end of Wilson Point Road) in the Town of Castine continuing in a northwesterly direction to the Fort Point Lighthouse on Cape Jellison in the Town of Stockton Springs. This regular concurrent rule-making makes this emergency rule-making permanent for a minimum of two years.

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The justification for the chosen boundary of the closed area was based on recent data provided to the Department that indicated that lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

For monitoring contaminants in Maine lobster, the State relies on data from the U.S. Environmental Protection Agency's National Coastal Condition Assessment (NCCA) Program, which last assessed contaminants in lobster in 2010. Data from the 2010 NCCA revealed that mercury levels in Maine lobster were below the Maine CDC action level that would warrant a consumption advisory for sensitive populations. However, the Department recently received additional data which were collected as a result of court-ordered study stemming from a federal lawsuit (*Maine People's Alliance and the Natural Resources Defense Council v. Mallinckrodt, Inc.*). The Department requested analysis of the data by the State Toxicologist and Department of Environmental Protection staff. Based on this analysis, DMR determined that a consumption advisory would be warranted for lobster taken from the designated area. Because this is a very discrete area and in order to be health protective, DMR is instead taking immediate action to close the area as a precautionary measure. DMR anticipates that the closure will be in place a minimum of two years while the State continues to collect more information from the area to inform future management and public health actions.

While there was significantly less data available for crabs in the study, the DMR believes that there is adequate reason to be concerned that crabs could have similar contamination levels to lobster in the closure area. Because DMR has limited data from this area, a precautionary approach is being taken by also closing the area to crab harvest until additional samples can be taken and analyzed. In addition it would be difficult to enforce a closure for lobster and not crab, as the gear is the same.

Fiscal impact of rule:

Enforcement of the regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171, 6851(B)
Chapter number/title: **Ch. 6**, Lobster Processing, Restrictions and Prohibitions
Filing number: **2014-136**
Effective date: 7/8/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation clarifies the requirements for the holder of a Lobster Processor License (LPL) by allowing them to process lobster both in the shell as currently allowed and from the shell as proposed. This change allows LPL holders to process lobster from the shell without having to separately purchase the Lobster Meat Permit. There were 15 Lobster Processing License (LPL) holders in 2013 and to date there have been 7 licenses issued in 2014. This should marginally make these businesses more profitable and streamlined as they would not be required to additionally purchase the \$159 annual Lobster Meat Permit.

Basis statement:

This regulation clarifies the requirements for the holder of a Lobster Processor License (LPL) by allowing them to process lobster both in the shell as currently allowed and from the shell as proposed. This change allows LPL holders to process lobster from the shell without having to separately purchase the Lobster Meat Permit. There were 15 Lobster Processing License (LPL) holders in 2013 and to date there have been 7 licenses issued in 2014. This should marginally make these businesses more profitable and streamlined as they would not be required to additionally purchase the \$159 annual Lobster Meat Permit.

Since the collapse in the boat price of lobster in the fall of 2008, Maine's lobster fishery has struggled to find new ways of doing business that will better support a profitable industry. This rule-making effort is a clarifying measure that streamlines the licensing process for these businesses. The existing record keeping requirements would be marginally lessened with the elimination of the requirement of LPL holders to additionally purchase the Lobster Meat Permit. The additional cost to DMR of tracking changes due to this rule would be minimal.

Fiscal impact of rule:

Enforcement of this rule-making would not require additional activity during routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171, 6749
Chapter number/title: **Ch. 26**, Sea Urchin Regulations and 2014-2015 Harvesting Season
Filing number: **2014-137** (*filed with 2014-138*)
Effective date: 7/8/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(*Same as Basis Statement*)

Basis statement:

For purposes of conservation, pursuant to 12 M.R.S. §6171, §6171-A and §6749, this rule seeks to conserve the sea urchin resource for utilization in the future, and therefore should have a positive impact on Maine's fishing industry in the long term. The sea urchin resource in each of Maine's management zones has not shown significant signs of recovery since stocks declined and the seasons were drastically shortened in 2004; in addition, there has been a decline in the roe content of harvested urchins in Zone 1. Therefore, a daily catch limit is being adopted for Zone 1, the existing daily catch limit for Zone 2 will continue, and seasons of lengths similar to 2013-14 are being proposed for both zones. A summary of the department's current assessment of the sea urchin fishery and stock is available in Appendix A of the Sea Urchin Zone Council February 20, 2014 meeting minutes, available at http://www.maine.gov/dmr/council/sea_urchin/minutes.

For Zone 1, a 15-day season is adopted for divers, trappers, rakers and draggers in 2014-2015, which is the same number of days as in the 2013-2014 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers will have a choice of fishing 15 days in September and October ("early season"), or 15 days in December ("late season"); and draggers in December and January ("early season"), or February and March ("late season").

This regulation would change the deadline for Zone 1 harvesters to change their early/late season designation, from September 1 to August 15.

This regulation would also establish a daily catch limit of no more than twelve (12) totes (about 1000 lbs.) for Zone 1 harvesters.

For Zone 2, a 38-day season is adopted for divers, trappers, rakers and draggers in 2014-2015, which is the same number of days as in the 2013-2014 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers would have a choice of fishing 38 days in September through December ("early season"), or 38 days in December through March ("late season"); and draggers would have 38 days in October through December plus March ("early season") or December through March ("late season").

For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 9-day season is adopted for divers, trappers, rakers and draggers in 2014-2015, which is the same number of days as the season in 2013-2014. Divers, rakers and trappers would have a choice of fishing 9 days in November and December ("early season"), or 9 days in December and March ("late season"); both early and late season draggers would have 9 days in December and March.

In addition, it is adopted that the expiration dates for Harvester Logbooks for Zone 1 and Zone 2 harvesters (currently located in Chapter 8.20(P) Landings Program) and the Pemaquid Point Sea Urchin Research Conservation Area be removed.

Fiscal impact of rule:

Enforcement of the regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171, 6749
Chapter number/title: **Ch. 8**, Landings Program: **8.20**, Urchin Harvest
Filing number: **2014-138** (*filed with 2014-137*)
Effective date: 7/8/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

For purposes of conservation, pursuant to 12 M.R.S. §6171, §6171-A and §6749, this rule seeks to conserve the sea urchin resource for utilization in the future, and therefore should have a positive impact on Maine's fishing industry in the long term. The sea urchin resource in each of Maine's management zones has not shown significant signs of recovery since stocks declined and the seasons were drastically shortened in 2004; in addition, there has been a decline in the roe content of harvested urchins in Zone 1. Therefore, a daily catch limit is being adopted for Zone 1, the existing daily catch limit for Zone 2 will continue, and seasons of lengths similar to 2013-14 are being proposed for both zones. A summary of the department's current assessment of the sea urchin fishery and stock is available in Appendix A of the Sea Urchin Zone Council February 20, 2014 meeting minutes, available at http://www.maine.gov/dmr/council/sea_urchin/minutes.

For Zone 1, a 15-day season is adopted for divers, trappers, rakers and draggers in 2014-2015, which is the same number of days as in the 2013-2014 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers will have a choice of fishing 15 days in September and October ("early season"), or 15 days in December ("late season"); and draggers in December and January ("early season"), or February and March ("late season").

This regulation would change the deadline for Zone 1 harvesters to change their early/late season designation, from September 1 to August 15.

This regulation would also establish a daily catch limit of no more than twelve (12) totes (about 1000 lbs.) for Zone 1 harvesters.

For Zone 2, a 38-day season is adopted for divers, trappers, rakers and draggers in 2014-2015, which is the same number of days as in the 2013-2014 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers would have a choice of fishing 38 days in September through December ("early season"), or 38 days in December through March ("late season"); and draggers would have 38 days in October through December plus March ("early season") or December through March ("late season").

For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 9-day season is adopted for divers, trappers, rakers and draggers in 2014-2015, which is the same number of days as the season in 2013-2014. Divers, rakers and trappers would have a choice of fishing 9 days in November and December ("early season"), or 9 days in December and March ("late season"); both early and late season draggers would have 9 days in December and March.

In addition, it is adopted that the expiration dates for Harvester Logbooks for Zone 1 and Zone 2 harvesters (currently located in Chapter 8.20(P) Landings Program) and the Pemaquid Point Sea Urchin Research Conservation Area be removed.

Fiscal impact of rule:

Enforcement of the regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171
Chapter number/title: **Ch. 28**, Marine Worms
Filing number: **2014-139**
Effective date: 7/8/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

This rule-making implements measures consistent with 12 M.R.S. §6752 which was amended in 2013 in order to set the personal use daily limit of 50 for the take or possession of marine worms. Ch. 28 currently allows for the taking of 125 marine worms on Sunday. No person, including those with a commercial marine worm harvesting license, may take more than 50 worms on Sunday under this existing law.

Fiscal impact of rule:

Enforcement of the regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171, 6312
Chapter number/title: **Ch. 85**, Saltwater Fishing Registry
Filing number: **2014-140**
Effective date: 7/8/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule making implements measures consistent with 12 M.R.S §6312 which was enacted in 2011 in order to create a recreational saltwater fishing registry and license. It requires that a person who is required to hold a saltwater recreational fishing registration present it upon request to a Marine Patrol Officer, or provide proof that they are exempt from the registry requirement.

Among the individuals exempted from the registry requirement are: a person under 16 years of age; a passenger on board a vessel captained by an individual who possesses a valid recreational fishing operator's license; a person renting a smelt fishing camp from an operator that possesses a valid recreational fishing operator's license; a resident fishing on July 4th, Labor Day weekend or Memorial Day weekend; a person who has employed the guiding services of an individual who possesses a current guide license for tidewater fishing and a valid recreational fishing operator's license; a person fishing from a dock, pier or wharf that is owned by an individual who possesses a valid recreational fishing operator's license; a person who holds and presents upon demand a current and valid registration or license to engage in saltwater recreational fishing by a state that has been designated as an exempted state under 50 *Code of Federal Regulations*, Section 600.1415; a person registered on the *National Saltwater Angler Registry* through the United States Department of Commerce, National Oceanic and Atmospheric Administration; a member of the Passamaquoddy Tribe if the Tribe has certified to the Commissioner that they are collecting the registry data and reporting the data to the Commissioner; a member of the Penobscot Nation if the Nation has certified to the Commissioner that they are collecting the registry data and reporting the data to the Commissioner; a member of the Houlton Band of Maliseet Indians if the Band has certified to the Commissioner that they are collecting the registry data and reporting the data to the Commissioner; and a member of the Aroostook Band of Micmacs if the Band has certified to the Commissioner that they are collecting the registry data and reporting the data to the Commissioner.

A person holding a valid freshwater fishing license who has indicated whether or not that person engaged in saltwater recreational fishing during the prior calendar year is not required to register, but must produce their valid freshwater fishing license upon request. A person holding a valid commercial fishing license who has indicated whether or not the person engaged in saltwater recreational fishing during the prior year is not required to register, but must produce their valid commercial fishing license upon request.

Basis statement:

This rule-making implements measures consistent with 12 M.R.S §6312 which was enacted in 2011 in order to create a recreational saltwater fishing registry and license. It requires that a person who is required to hold a saltwater recreational fishing registration present it upon request to a Marine Patrol Officer or other authorized personnel. Individuals who are exempted from the recreational saltwater fishing registration requirement as set forth in 12 M.R.S. §6312(3) would have to provide proof that they meet one of the exemptions.

Fiscal impact of rule:

Enforcement of these amendments would not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6533
Chapter number/title: **Ch. 105**, Safety Regulations
Filing number: **2014-141**
Effective date: 7/8/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(Same as Basis Statement)

Basis statement:

This rule-making is required due to DMR's new online license renewal initiative. The DMR is concerned that requiring commercial scallop and urchin divers and tender license holders to upload proof of required First Aid/CPR certification could lead to delays in processing renewals. Therefore, a box would be checked off during online renewal by the license holder attesting to the fact that they have a current, valid First Aid/CPR certification. License holders still must possess and provide proof of their required training per [12 MRS §6533](#) upon request by a Marine Patrol Officer.

Fiscal impact of rule:

Enforcement of these regulations will not require additional administrative and enforcement activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171, 6173
Chapter number/title: **Ch. 25**, Lobster and Crab: **25.40**, Green Crab Harvest Facilitation
Ch. 8, Landings Program: **8.02**, Compliance; **8.20(A)**, Harvester Reporting Green Crabs
Filing number: **2014-157, 158**
Effective date: 8/10/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation would improve the ability of individuals to collect and remove from coastal Maine waters the invasive and damaging green crab species. The considerable adverse effect of green crab predation on Maine's valuable shellfish population has increased the importance of streamlining and improving DMR regulations regarding the harvest of green crabs.

The regulations include: eliminating the restriction on the taking of green crabs as by-catch by licensed commercial lobster harvesters; no longer requiring a lobster/crab license holder to obtain a green crab-only license in order to sell green crabs; eliminating the harvester reporting requirement for green crabs; and clarifying requirements prohibiting harvesting green crabs at night and the usage of unapproved bait.

Basis statement:

This regulation would improve the ability of individuals to collect and remove from coastal Maine waters the invasive and damaging green crab species. The considerable adverse effect of green crab predation on Maine's valuable shellfish population has increased the importance of streamlining and improving DMR regulations regarding the harvest of green crabs.

The regulations include: eliminating the restriction on the taking of green crabs as by-catch by licensed commercial lobster harvesters; no longer requiring a lobster/crab license holder to obtain a green crab-only license in order to sell green crabs; eliminating the harvester reporting requirement for green crabs; and clarifying requirements prohibiting harvesting green crabs at night and the usage of unapproved bait.

A minor change was made to the proposed rule in Ch. 24.40(B)(1)(a). The change is that it shall be unlawful for green crab traps to have any opening **less** than 1 ½ inch wide as opposed to the existing regulation that requires an opening **greater** than 1 ½ inches.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171
Chapter number/title: **Ch. 34**, Groundfish Regulation
Filing number: **2014-159**
Effective date: 8/10/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2014, the Department enacted emergency rule-making on May 15, 2014 for all persons aboard charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. For recreational cod fishing, the minimum fish size increases from 19 inches to 21 inches and the closed season is increased by two months and is now September 1, 2014 through April 14, 2015. For recreational haddock fishing, the daily per angler bag limit decreases from an unlimited amount to three fish per day and the closed season increases by four months and is now September 1 through November 20, 2014 and March 1 through April 30, 2015.

This rule-making would make that emergency rule-making permanent.

The recreational catch of both Gulf of Maine cod and haddock exceeded the catch limit in place for FY 2013. Because the FY 2013 recreational overage was substantial, significant changes in management measures were deemed necessary by NMFS to ensure the recreational fishery does not exceed its catch limit again in FY 2014. A very small bag limit was deemed required to sufficiently reduce recreational haddock catch and prevent additional quota overages. Analysis shows that many anglers encounter and keep only small numbers of haddock. The available information for FY 2013 shows that, on average, less than one haddock was kept per angler.

Basis statement:

(Same)

Fiscal impact of rule:

Enforcement of this regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171-A(1)(D)&(4-A)
Chapter number/title: **Ch. 25**, Lobster and Crab: 25.04(B)(3), Lobster Trawl Limits (off Hancock County)
Filing number: **2014-220**
Effective date: 9/12/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This emergency rule-making adoption, as authorized by 12 M.R.S. §6171-A, is necessary to avoid anticipated gear conflicts involving lobster trawl traps and herring purse seines and mid-water trawlers in a specific area off Mount Desert Island. Under DMR Regulation Ch. 25.04(B), it is unlawful to have on any trawl more than three lobster traps in designated areas including an area off Hancock County. The Department and Maine Marine Patrol have received recent indications that the herring fishery will be in this area shortly and are concerned with lobster trap gear conflict.

This emergency rule-making would create a temporary exception to this three lobster trap trawl limit in a designated area as outlined in 25.04(B)(3) in order to minimize gear conflicts that could arise between the herring fishery and the high concentration of lobster gear in this area. Given the historic high concentration of herring at this time of the year in this area, minimizing gear conflicts is critical to the success of both fisheries.

Specifically, in all waters within the described area that lies due south and seaward of a line drawn between latitude 44° 1.335 N and longitude 68° 13.845 W and latitude 44° 9.481 N and longitude 67° 57.56 W, it shall be lawful to have more than three traps on a trawl line. All areas north of this line within the Hancock County Trawl Limit Area as described by DMR Regulation Chapter 25.04(B)(3) will be limited to three traps per trawl per current rule. This emergency rule expires on December 10, 2014.

As authorized by 12 M.R.S. §6171-A(4-A), the Department of Marine Resources adopts this emergency regulation because “immediate action is necessary to prevent gear conflict and promote the optimum development of marine organisms as outlined in 12 M.R.S. 6171-A(1)(D).

Basis statement:

This emergency rule-making adoption, as authorized by 12 M.R.S. §6171-A, is necessary to avoid anticipated gear conflicts involving lobster trawl traps and herring purse seines and mid-water trawlers in a specific area off Mount Desert Island. Under DMR Regulation Ch. 25.04(B), it is unlawful to have on any trawl more than three lobster traps in designated areas including an area off Hancock County. The Department and Maine Marine Patrol have received recent indications that the herring fishery will be in this area shortly and are concerned with lobster trap gear conflict.

This emergency rule-making would create a temporary exception to this three lobster trap trawl limit in a designated area as outlined in Ch. 25.04(B)(3) in order to minimize gear conflicts that could arise between the herring fishery and the high concentration of lobster gear in this area. Given the historic high concentration of herring at this time of the year in this area, minimizing gear conflicts is critical to the success of both fisheries.

Specifically, in all waters within the described area that lies due south and seaward of a line drawn between latitude 44° 1.335 N and longitude 68° 13.845 W and latitude 44° 9.481 N and longitude 67° 57.56 W, it shall be lawful to have more than three traps on a trawl line. All areas north of this line within the Hancock County Trawl Limit Area as described by DMR

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Regulation Ch. 25.04(B)(3) will be limited to three traps per trawl per current rule. This emergency rule expires on December 10, 2014.

In accordance with an emergency adoption of an amendment to a rule authorized by 12 M.R.S. §6171-A, this rule is effective immediately upon publication in a newspaper of general circulation (Bangor Daily News) in the area of the state affected. A public hearing will be held in the affected area after the rule takes effect if requested of the Commissioner in writing by 5 persons. The hearing will be held within 30 days of the Commissioner receiving the written requests.

Due to the absence of the Commissioner and the Deputy Commissioner, the Commissioner has delegated signature authority for this emergency rule-making action to the Department's Director of State Marine Policy as authorized under 12 M.R.S. §6024. Thus, as authorized by 12 M.R.S. §6171-A(4-A) the Department of Marine Resources adopts this emergency regulation because "immediate action is necessary to prevent gear conflict and promote the optimum development of marine organisms as outlined in 12 M.R.S. 6171-A(1)(D).

Fiscal impact of rule:

Enforcement of the proposed regulation will likely require some measurable, additional activity by Marine Patrol. Existing enforcement personnel would monitor compliance during their routine patrols.

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Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6671, 6673, 6681
Chapter number/title: **Ch. 7**, Requirements for Municipalities Having Shellfish Conservation Programs
Filing number: **2014-247**
Effective date: 10/7/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These amendments update the regulations for towns with approved Shellfish Conservation Programs by adding definitions, clarifying management responsibilities, clarifying the revocation of approved ordinance procedures; clarifying the license allocation process, specifying conservation closure and opening permit requirements and defining conservation activities and procedures.

Basis statement:

This rule-making updates the regulations for towns with approved Shellfish Conservation Programs by adding definitions, clarifying management responsibilities, clarifying the revocation of approved ordinance procedures; clarifying the license allocation process, specifying conservation closure and opening permit requirements and defining conservation activities and procedures.

This regulation impacts municipalities that have shellfish conservation programs. There are a total of 113 coastal towns and as of April 2014 there are 78 towns that have approved municipal shellfish conservation programs.

Fiscal impact of rule:

Enforcement of these amendments would require additional administrative activity in this Agency based on new statutes. Existing enforcement personnel will monitor compliance during their routine patrols.

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Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171, 6728-C
Chapter number/title: **Ch. 11**, Scallop Regulations and 2014-2015 Harvesting Season
Filing number: **2014-248**
Effective date: 10/7/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This rule-making is necessary to establish the 2014-2015 scallop season. After the fishery experienced an all-time low in 2005 of 33,000 lbs. of landings, Maine fishermen and the DMR began to implement a series of forward thinking management measures aimed at rebuilding the depleted scallop resource while also providing some economic opportunity in a limited fishery. Prior to 2005, state waters were managed through a 132 day season, minimum 4 inch shell, and a 10'6" drag size limit, with additional area-specific restrictions in several bays. In 2008, mandatory harvester and dealer reporting was implemented and a 200 pound maximum daily limit was established. In 2009, a moratorium was placed on issuing new licenses and entry to the commercial fishery became limited, the season was reduced to 70 days, the minimum ring size that lined the drags was increased to 4 inches and 13 large conservation closures encompassing 20% of Maine's coastal waters were put in place for three years to allow the resource to rebuild.

After dozens of meetings with industry over the following three years, the original conservation closures were re-opened on a limited basis in 2012 as Limited Access Areas that have been managed using a soft Total Allowable Catch (TAC) which sets a target harvest of 30-40% of the estimated harvestable biomass. In addition, recognizing the scallop resource and fishery vary coast wide, flexibility was provided for different regions to use various measures to achieve the common goal of rebuilding the resource by establishing three different scallop management Zones. There is no opt-in requirement for Zones, which retains the mobile aspect of the fleet. Finally, that same year a 10-year Rotational Management Plan was implemented in the Downeast portion of coastal Maine in Zone 2 along with in-season Targeted Closures to protect areas containing high amounts of sublegal scallops or depleted areas requiring rebuilding. The three layers of spatial closures (Limited Access Areas, Rotational Areas and Targeted Closure Areas) are the core of Maine's scallop spatial management program, which represents a paradigm shift from the way that the fishery had been governed in the past.

The DMR seeks to continue towards the goal of rebuilding the Maine scallop resource while balancing the three-fold increase in harvester participation of 131 active licenses in 2008 to 421 active licenses in 2013. In addition, industry members have expressed concern over the instability that is created by in-season emergency actions such as targeted closures. This, in combination with the limited amount of scientific information available to DMR to effectively evaluate the current resource status, led to the DMR recommendation of a 48 day season in Zones 1 & 2 and 32 day season in Zone 3 to the Scallop Advisory Council (SAC) at their June 30 season-setting meeting. After much deliberation, the SAC was not willing to further restrict effort and rejected the DMR's reduction and proposed a 70-day season in Zone 1 & 2 and a 50-day season in Zone 3 instead. The majority of the scallop industry prefers that the DMR Commissioner provide excessive harvest opportunity from the commencement of the season while undertaking emergency actions in-season to curtail harvest as needed. Therefore, this rule-making reflects the desires of both the industry and the SAC to provide excessive fishing opportunities at the onset of the season with the Commissioner able to restrict harvest through emergency rule-making authority during the season.

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The SAC recommendation included a 70-day season in both Zones 1 & 2 with separate calendars for divers and draggers as well as one day per week in the Zone 1 Limited Access Areas starting in January. For Zone 3, a 50-day season is adopted with separate calendars for divers and draggers and one day per week in the Whiting & Dennys Bays Limited Access Area starting at the beginning of December. While the resource may not be able to accommodate the full 70-day season, the SAC and the majority of the industry prefer to have the opportunity of fishing as many of the 70 days as possible given the many foul weather days in January and February that prevent industry members from safely accessing the resource. DMR will use emergency rule-making authority to shorten or close the 2013-14 season in order to protect the scallop resource if unusual damage and/or imminent depletion become evident.

In addition, the DMR will implement a number of targeted closures based on depletion and the presence of spat-producing scallops which include Eastern Casco Bay, Damariscotta River, Ocean Point, Muscle Ridge (open two days per week) and Lower Muscle Ridge as well as to protect municipal mooring fields in Blue Hill Harbor, Western Blue Hill Bay, Bartlett's Harbor, Seal Harbor, Northeast Harbor and Somes Sound. Also, the DMR is proposing language to clarify daily possession limits. Finally, the trigger mechanism will be extended to the entire state scallop fishery, whereby if the DMR receives information indicating that a likelihood of 30-40% of the harvestable biomass has been removed, the Commissioner will close harvesting for the remainder of the season through emergency action.

The 2014-15 season follows the pattern of the 2013-14 season with a daily possession limit for Zone 1 & 2 of 15 gallons with a 70-day season, while Zone 3 would have a 10-gallon daily limit with a 50-day season. For Zone 1 & 2, a 70-day season is set for draggers to start on December 1, 2014 with fishing prohibited on Fridays, Saturdays and Sundays in December, January, February and April. December 26, 2013 and January 2, 2015 are open and December 24, 25 and 31, 2014 and January 1, 2015 would be closed. Scallop fishing by Zone 1 & 2 draggers in the month of March would be prohibited on Thursdays, Fridays, Saturdays and Sundays. The last day of the Zone 1 & 2 drag season is April 9, 2015. For Zone 1 & 2, a 70-day season is set for divers to start on December 3, 2014 with fishing prohibited on Sundays, Mondays and Tuesdays in December, and April with the exception of December 22, 23, 29, and 30 which would be open. December 24, 25 and 31, 2014 would be closed. Scallop fishing by Zone 1 & 2 divers in the months of January and February would be prohibited on Sundays, Mondays, Tuesdays and Saturdays plus January 1, 2015 would be closed. In March 2015, fishing is prohibited on Sundays and Mondays. Fishing is also prohibited on Tuesday, March 3, 2015. The last day of the Zone 1 & 2 dive season is April 11, 2015. For Zone 3, a 50-day season is set for draggers to start on December 1, with fishing prohibited on Thursdays, Fridays, Saturdays and Sundays. December 24, 25, and 31, 2014 and January 1, 12, 13, 14, 19, 20 and 21, 2015 would be closed and December 26, 2014 and January 2, 2015 would be open. The last day of the Zone 3 drag season is April 7, 2015. For Zone 3, a 50-day season is set for divers to start on December 4, 2014 with fishing prohibited on Sundays, Mondays, Tuesdays and Wednesdays in December, March and April. December 23 and 30, 2014 would be open and December 24, 25 and 31, 2014 would be closed. Scallop fishing by Zone 3 divers in the months of January and February would be prohibited on Saturdays, Sundays, Mondays and Tuesdays plus January 1, 14, 15, 16, 21, 22 and 23, 2015 would be closed. The last day of the Zone 3 dive season is April 11, 2015.

Fiscal impact of rule:

Enforcement of these amendments would not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6856
Chapter number/title: **Ch. 15**, General Shellfish Sanitation Requirement
Filing number: **2014-249**
Effective date: 10/7/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule-making removes regulations that DMR does not implement such as the Performance Based Inspection Program and remove unnecessary language including the shellfish bacteriological standards and shellfish contamination standards for import. The rule-making also incorporates the most recent updates to the *2013 National Shellfish Sanitation Program Guide* and makes editorial clarifications throughout including to the wet storage, comingling and definitions sections. The changes also allow for the retail sale of shellstock from an aquaculture lease or LPA site consistent with recent statute changes and allow dealer to dealer bulk tagging of product.

Basis statement:

This rule-making removes regulations that DMR does not implement such as the Performance Based Inspection Program and remove unnecessary language including the shellfish bacteriological standards and shellfish contamination standards for import. The rule-making also incorporates the most recent updates to the *2013 National Shellfish Sanitation Program Guide* and makes editorial clarifications throughout including to the wet storage, comingling and definitions sections. The changes also allow for the retail sale of shellstock from an aquaculture lease or LPA site consistent with recent statute changes and allow dealer to dealer bulk tagging of product.

Changes to Ch. 15 will require certified shellfish dealers to incorporate time-to-temperature tracking and monitoring documentation according to the *2013 National Shellfish Sanitation Program Guide*. This requires additional record keeping and documentation of shipments made at specific temperatures. The cost for certified shellfish dealers to implement these regulations will vary depending on their operations, but is not expected to be unnecessarily burdensome. The allowance for selling shellstock from an aquaculture lease site and dealer to dealer bulk tagging will both be economic benefits to the industry. The editorial changes are largely cost-neutral, removing programs and/or standards that DMR does not use or simply clarifying language.

Fiscal impact of rule:

Enforcement of the regulation will not require additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171
Chapter number/title: **Ch. 50**, Spiny Dogfish and Coastal Sharks: **50.02**, Harvest, Possession and Landing Restrictions
Filing number: **2014-250**
Effective date: 10/7/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for this rule-making is to increase the spiny dogfish commercial daily trip limit from 4,000 to 5,000 pounds effective September 8, 2014. This will expand commercial fishing opportunity, by amending the commercial trip limit regulation to comply with the Atlantic States Marine Fisheries Commission (ASMFC) fishery management plan. On August 6, 2014, the ASMFC's Spiny Dogfish & Coastal Shark Management Board increased the daily trip limit to 5,000 pounds effective September 8, 2014.

Basis statement:

Notice of this proposed rule-making was given on August 20, 2014 on the following: the DMR website, the DMR rule-making interested parties e-mail list, the DMR Advisory Council via e-mail, the Secretary of State's proposed rule-making website and the five major daily newspapers.

The principal reason for this rule-making is to increase the spiny dogfish commercial daily trip limit from 4,000 to 5,000 pounds effective September 8, 2014. This will expand commercial fishing opportunity, by amending the commercial trip limit regulation to comply with the Atlantic States Marine Fisheries Commission (ASMFC) fishery management plan. On August 6, 2014, the ASMFC's Spiny Dogfish & Coastal Shark Management Board increased the daily trip limit to 5,000 pounds effective September 8, 2014.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §§ 6171, 6173
Chapter number/title: **Ch. 51** (*New*), Black Sea Bass; **Ch. 8**, Landings Program: **8.10(C)(4)**, Primary Buyer Permit Reporting
Filing number: **2014-251, 252**
Effective date: 10/7/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

Notice of this proposed rule-making was given on August 6, 2014 on the following: the DMR website, the DMR rule-making interested parties e-mail list, the DMR Advisory Council via e-mail, the Secretary of State's proposed rule-making website and the five major daily newspapers.

Black sea bass (*Centropristis striata*) have become increasingly present in the Gulf of Maine and Maine state waters in recent years. This rule-making implements measures consistent with the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan regarding reporting, possession, and conservation measures for black sea bass in order to provide expanded access for recreational fishermen, and additional economic opportunity for commercial harvesters on this valuable stock. The State of Maine's current quota for black sea bass is .5% of the annual Total Allowable Catch for commercial harvest (10,850 lbs. in 2014). This rule-making establishes licensing requirements for dealers, method of harvest, commercial trip limits and recreational daily bag limits. Recreational measures provide parity with those in place in neighboring states' waters.

This rule-making does include new reporting, record-keeping and other administrative costs required for compliance. However, buyers already are required to submit weekly reporting. Thus, enforcement of this rule will require minimal additional activity in this Department. Existing enforcement personnel will monitor compliance during their routine patrols.

Fiscal impact of rule:

Enforcement of these amendments would not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: **13-188**
Statutory authority: 12 MRSA §6171(3)
Chapter number/title: **Ch. 11**, Scallops; **11.22**, Atlantic Sea Scallop Regulations and 2014-2015 Harvesting Season, Targeted Closures - (6) Pleasant Bay, (7) Lower Englishman Bay
Filing number: **2014-296**
Effective date: 12/27/2014
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule / Basis statement:

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in Pleasant Bay as well as in Lower Englishman Bay in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2014-15 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery.

The Department seeks to take rule-making action to close targeted areas within the Addison and Little Kennebec/Englishman Bay Rotational Areas. Based on direct input from Marine Patrol and sea sampling personnel as well as independent industry participants, the level of fishing effort in these discrete areas during the first three weeks of fishing has likely exceeded the 30% removal target and threatens future recruitment of sublegal "seed" scallops in these areas. A fishery independent survey in April 2014 identified these rotational areas as having an increased density of harvestable scallops following two years of closure and moderate amounts of seed scallops and thereby suggesting a recovery has begun. Immediate action is necessary to protect the remaining seed and legal scallops in these areas, allow for continued harvest in the remaining areas, and continue to support rebuilding efforts.

The Maine scallop fishery was formerly a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing just over 33,000 pounds of scallop meats from Maine waters (Figure 1). The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity in a limited fishery. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan. The combination of conservation measures appears to be effective as demonstrated by 424,547 pounds being landed in 2013, a twelve-fold increase from 2005 (Figure 2). However, those landings were caught by approximately 150 additional participants compared to previous years (Figure 3).

This season was undertaken with the understanding that the length of the season as presented likely far exceeds what the resource can sustain, and that the Department may need to use emergency rule-making authority during the season to prevent overfishing. The industry, through the Scallop Advisory Council, requested that the Department provide the fishing opportunity up front, and make adjustments in-season as necessary. The Department was willing to take this approach in part because this fishery is prosecuted in the winter months, and proposing a very limited season could create an incentive to fish in unsafe

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conditions. The Department emphasized that it will take action to continue to rebuild the scallop resource, as well as provide stability and predictability for the industry into the future.

The Department seeks to take rule-making action to close targeted areas within the Addison and Little Kennebec/Englishman Bay Rotational Areas. Based on direct input from Marine Patrol and independent industry participants, the level of fishing effort in these discrete areas during the first four weeks of fishing has likely exceeded the 30% removal target and threatens future recruitment of sublegal “seed” scallops in these areas. A fishery independent survey in April 2014 identified these rotational areas as having an increased density of harvestable scallops following two years of closure and moderate amounts of seed scallops and thereby suggesting a recovery has begun. Immediate action is necessary to protect the remaining seed and legal scallops in these areas, allow for continued harvest in the remaining areas, and continue to support rebuilding efforts.

In the [Addison Rotational Area](#), an immediate conservation closure of Pleasant Bay, as well as the Harrington and Addison Rivers is advised to protect sublegal scallops from further unusual damage and imminent depletion so that scallops may be able to recruit up to the fishery and be available for harvest in future years. Marine Patrol feedback in combination with direct industry reports indicate that Pleasant Bay, as well as the Harrington and Addison Rivers, have been the subject of intense fishing. During the first week of the season, 30-40 vessels were fishing in the area. By the fourth week (13 fishing days) of the season, 3-4 vessels remained. Despite fewer numbers of vessels, the time needed to reach the daily limit increased from 3-4 hours initially to 6-7 hours. Industry reports indicate the legal catch is down in these areas and vessels have shifted their effort away to fish areas where catch rates are higher. In addition, the fishery independent survey in April 2014 observed a presence of sublegal and seed scallops in the area around Strout Island at the mouth of the Harrington River (Figure 4), which require protection in order to ensure these scallops have the ability to recruit up to the fishery in subsequent fishing years. Therefore, continued fishing in this area threatens sublegal scallops through incidental mortality of dredges and threatens the conservation of legal sized spawning scallops. The remaining portion of the [Addison Rotational Area](#) will remain open for harvest opportunities.

In the [Little Kennebec/Englishman Bay Rotational Area](#), Marine Patrol and sea sampling observations in combination with direct industry reports indicate that Lower Englishman Bay, including Roque Harbor (Sand Bay) has been the subject of intense fishing and requires an immediate conservation closure. During the first three weeks of fishing, the number vessels fishing in the area has increased from 30-40 in the first week to 60 in the third week. This Lower Englishman Bay and Roque Harbor (Sand Bay) area has been subjected to unusual damage as weather has forced many vessels to remain in this area that otherwise would have dispersed to other areas. Catch rates in the Lower Englishman Bay and Roque Harbor (Sand Bay) area have slowed from an average of 1.5-2 hours to 4-5 hours to reach the daily limit indicating that the majority of legal sized scallops in the area had been harvested. The Lower Englishman Bay and Roque Harbor (Sand Bay) has been the focus of intense fishing pressure during foul weather days as vessels are able to operate in the lee of the islands here. In addition the fishery independent survey in April 2014 observed a high presence of sublegal scallops in Roque Harbor (Sand Bay) (Figure 5), which require protection from incidental dredge mortality in order to ensure these scallops have the ability to recruit up to the fishery in subsequent fishing years. A conservation closure of Lower Englishman Bay, including Roque Harbor (Sand Bay), is needed to protect remaining broodstock scallops in order to continue to rebuild the resource in this area as well as to protect sublegal scallops from further unusual damage and imminent depletion so that they may be able to recruit up to the fishery and be available for harvest in future years. Therefore, continued fishing threatens sublegal scallops through incidental mortality of dredges and conservation of legal

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sized spawning scallops. The remaining portion of the [Little Kennebec/Englishman Bay Rotational Area](#) will remain open for harvest opportunities.

The Department is concerned that continued harvesting during the remainder of the 2014-2015 fishing season in the above listed areas will damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Pleasant Bay (Figure 6) and in Lower Englishman Bay (Sand Bay) (Figure 7).

For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by [12 M.R.S. §6171](#)(3).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.